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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

2004 AUG 26 P 2:54

CLERK US DISTRICT COURT
NORFOLK, VIRGINIA

Law

YASER ESAM HAMDI,

Petitioner,

v.

CASE NO. 2:02CV439

DONALD RUMSFELD

Secretary of Defense

The Pentagon

Arlington, Va.,

COMMANDER C.T. HANFT,

Commander, Consolidated Naval Brig

1050 Remount Road

Charleston, South Carolina,

Respondents.

PETITIONER'S RESPONSE TO RESPONDENTS'
MOTION FOR STAY

Comes now the Petitioner, by counsel, and responds to the government's motion to stay proceedings in this case for seven (7) days to allow for conclusion of settlement negotiations. For reasons set forth herein, Petitioner does not object to the short extension that Respondents request.

For over two and a half years, Petitioner has been wrongfully held in solitary confinement and denied a hearing on his habeas petition challenging his designation as an enemy combatant. Even now, after the Supreme Court has made clear in this case that "captivity in war is neither revenge nor punishment, but solely protective custody, the only purpose of which is to prevent the

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prisoners of war from further participation,” *Hamdi v. Rumsfeld*, 124 S. Ct. 2633, 2640 (2004) (citation omitted), Hamdi’s punitive solitary confinement continues.

The Court further stated: “[a] prisoner of war is no convict; his imprisonment is a simple war measure . . . [t]he object of capture is to prevent the captured individual from serving the enemy. He is disarmed and from then on must be removed as completely as practicable from the front, *treated humanely*, and in time exchanged, repatriated or otherwise released.” *Id.* (citations omitted) (emphasis added).

Despite the foregoing language from our nation’s highest court, Respondents continue to hold Hamdi in extended solitary confinement, a condition that not only is inhumane but also is unnecessary to accomplish the purpose for which Hamdi is purportedly held. Given the intolerable condition of his confinement, Petitioner unsurprisingly is seeking the surest and quickest way out of that detention and for the prompt return to his family. Because we believe that the settlement we are currently in the process of negotiating provides the “surest and quickest” means to that end, we do not oppose the extension requested.

In taking this position, we are mindful of the fact that there are many legal and factual issues to be resolved in this case, as discussed in Petitioner’s Hearing Memorandum filed earlier today. These include this Court’s jurisdiction, *see* Pet’r Hrg Mem. at 2-5; Resp. Mot. Stay at 4 n.1, the burden of proof, the adequacy of notice, and whether Petitioner must receive any discovery before the hearing. Any of these issues could give rise to an appeal which may only further extend Mr. Hamdi’s detention and, more importantly, his solitary confinement as well.

Moreover, our ability to communicate with Mr. Hamdi about the settlement proposal and to prepare him for a hearing if there is to be one is hampered by the fact that counsel’s only effective

means of communicating with Petitioner is to travel to Charleston, South Carolina where he is held.

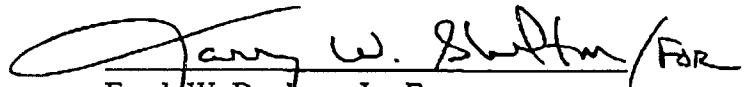
As this response is written, counsel are preparing to leave for Charleston to both discuss the government's settlement proposal with him and to prepare for the hearing before this Court.

In conclusion, for all of these reasons, we join in the motion for a seven (7) day stay or continuance to the hearing now set for August 30, 2004, in the hope that mutually agreeable terms and conditions that will secure Petitioner's prompt release can be negotiated.

Dated: August 26, 2004

Respectfully submitted,

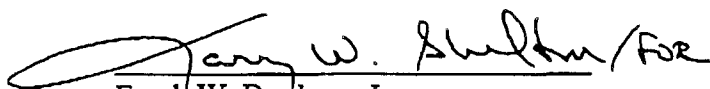
Yaser Esam Hamdi
By counsel,


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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Petitioner's Response to Respondent's Motion for Stay was sent via facsimile and by first-class mail to Paul D. Clement, Esq., Acting Solicitor General, Department of Justice, Washington, D.C., 20530-2217, on this the 26th day of August, 2004.

A handwritten signature in black ink, appearing to read "Frank W. Durham, Jr.", followed by a horizontal line and the word "For" in a cursive script.

Frank W. Durham, Jr.
Federal Public Defender
Eastern District of Virginia